

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 RICHARD P. WELLS, For Himself  
12 And In His Representative Capacity  
13 As Administrator of the Estate of  
Marilyn Wells, Decedent, and As  
Guardian of His Minor Children,

14 Plaintiff,

15 vs.

16 CALIFORNIA PHYSICIANS'  
17 SERVICE, dba BLUE SHIELD OF  
CALIFORNIA,

18 Defendants.  
19  
20  
21

Case No. C 05 1229 CRB

**STIPULATION AND [PROPOSED]  
ORDER CONTINUING CASE  
MANAGEMENT CONFERENCE**

**Case Management Conference:**

Date: December 8, 2006

Time: 8:30 a.m.

Place: Courtroom 8

22 IT IS HEREBY STIPULATED by and between plaintiff Richard P. Wells, in  
23 his individual capacity, as administrator of the Estate of Marilyn Wells, decedent,  
24 and as guardian of his minor children ("Plaintiff") and defendant California  
25 Physicians' Service, dba Blue Shield of California's ("Blue Shield"), through their  
26 respective counsel of record, as follows:

27 WHEREAS, a Case Management Conference in the above-captioned matter  
28 is currently scheduled for 8:30 a.m. on December 8, 2006;

1 WHEREAS, all parties and their counsel participated in a Case Management  
2 Conference in this matter on October 20, 2006;

3 WHEREAS, on October 17, 2006, the Ninth Circuit Court of Appeals issued  
4 an opinion in *Glanton v. Advancepcs, Inc.*, 465 F.3d 1123 (9th Cir. 2006), which  
5 addressed, among other things, the question of whether an ERISA plan participant  
6 who has suffered no injury in fact may maintain an action against the plan's  
7 fiduciaries for injunctive relief under ERISA;

8 WHEREAS, Defendant believes the holding in *Glanton* may be dispositive  
9 of Plaintiff's remaining claims in this action;

10 WHEREAS, the Court at the October 20, 2006 Case Management  
11 Conference continued all pending dates to permit Blue Shield to bring a motion for  
12 summary judgment under *Glanton* once that opinion becomes final;

13 WHEREAS, the appellant in the *Glanton* action filed petitions for panel  
14 rehearing and for rehearing en banc on October 31, 2006;

15 WHEREAS, the Ninth Circuit has not yet ruled on the *Glanton* appellant's  
16 petitions for panel rehearing or for rehearing en banc;

17 WHEREAS, Blue Shield intends to file a motion for summary judgment soon  
18 after the *Glanton* opinion is final;

19 WHEREAS, counsel for Plaintiff is currently under medical care for a heart  
20 condition and may need surgery in the near future; and

21 WHEREAS, it will not be possible for Blue Shield's motion for summary  
22 judgment to be heard until mid-February 2007 at the earliest; and

23 WHEREAS, the parties will not be able to participate in a meaningful  
24 continued Case Management Conference until the Court has ruled on the  
25 applicability of *Glanton* to this action,

26 NOW, THEREFORE, and based upon the above recitals, it is hereby agreed  
27 and stipulated by the parties hereto, through their respective attorneys of record,  
28 that:

1. The Case Management Conference presently scheduled for 8:30 a.m. on December 8, 2006 is continued to 8:30 a.m. on March 2, 2007.

IT IS SO STIPULATED.

MANATT, PHELPS & PHILLIPS, LLP  
GREGORY N. PIMSTONE  
ADAM PINES  
TRAVIS A. CORDER

Dated: December 4, 2006

By: s/ Adam Pines

Adam Pines

*Attorneys for Defendant*

CALIFORNIA PHYSICIANS' SERVICE,  
dba BLUE SHIELD OF CALIFORNIA

**BENJAMIN FRANKLIN LEGAL  
FOUNDATION**

Dated: December 4, 2006

By: s/ James B. Rhoads

---

James B. Rhoads

*Attorney for Plaintiff*

RICHARD P. WELLS

*Filer's Attestation: Pursuant to General Order No. 45, Section X(B) regarding signatures, Adam Pines hereby attests that concurrence in the filing of this document has been obtained.*

## ORDER

IT IS SO ORDERED.

Date: December 4, 2006

41064767.1

United States

